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10 Attorneys for Defendant, American Airlines, Inc.

11  
12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**  
14

15 KATHLEEN HANNI, individually and on  
behalf of all others similarly situated,

16 Plaintiff,

17 vs.  
18

19 AMERICAN AIRLINES, INC., and DOES 1  
through 20, inclusive,

20 Defendants.  
21

CASE NO. C08-00732 CW

**DEFENDANT'S MOTION FOR LEAVE  
TO FILE AMENDED NOTICE OF  
REMOVAL**

Date: April 24, 2008  
Time: 2:00 p.m.  
Courtroom: 2, 4<sup>th</sup> Floor

22 **I. INTRODUCTION**

23 Defendant American Airlines, Inc. ("American") requests the Court's permission to file an  
24 Amended Notice of Removal, a copy of which is attached hereto as Exhibit 1, to provide  
25 supplemental information that further reinforces this Court's jurisdiction over this action and that  
26 was not available to American at the time that its original Notice of Removal was filed on January  
27 31, 2008. After American filed its original Notice of Removal, Paul Hudson, counsel for plaintiff  
28 Kathleen Hanni, sent American a settlement demand in which Mr. Hudson sets forth plaintiff's

1 assertion of the amount in controversy in this putative class action. The amount demanded by  
 2 plaintiff to settle her current claim, \$5,000,000 plus \$250,000 in attorneys' fees or ten percent of  
 3 the total amount paid out to plaintiff and class members, whichever is greater, definitively  
 4 establishes this Court's jurisdiction to adjudicate plaintiff's case. While American denies the  
 5 allegations in plaintiff's settlement demand letter, the Ninth Circuit precedent establishes plaintiff's  
 6 settlement demand is sufficient to satisfy the amount in controversy requirement for the exercise  
 7 of the Court's jurisdiction. American therefore requests that the Court grant it leave to file an  
 8 Amended Notice of Removal.

## 9 **II. FACTUAL BACKGROUND**

10 Although American had not been served with process, it became aware that on December  
 11 28, 2007, an action had been commenced in the Superior Court of the State of California in and  
 12 for the County of Napa, entitled *Kathleen Hanni, individually and on behalf of all others similarly*  
 13 *situated v. American Airlines, Inc. and DOES 1 through 20, Inclusive*, as Case Number 26-40576  
 14 ("Complaint"). American then filed and served its original Notice of Removal on January 31,  
 15 2008.

16 Plaintiff filed a Motion to Remand on February 29, 2008, principally on the basis that the  
 17 jurisdictional amount needed for diversity (\$75,000) or under the Class Action Fairness Act  
 18 (\$5,000,000) was not met. On March 3, 2008, however, plaintiff's counsel, Paul Hudson, wrote a  
 19 settlement demand letter to American (attached as Exhibit A to the Declaration of Michael V.  
 20 Powell) demanding \$5,000,000 to settle this case, plus \$250,000 in attorneys' fees or ten percent of  
 21 the total amount paid out to plaintiff and class members, whichever is greater ("Settlement  
 22 Demand").<sup>1</sup>

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23  
 24 <sup>1</sup> As noted in American's Notice of Pendency of Other Action or Proceeding filed with this Court  
 25 on February 19, 2008, there is an identical class action that Mr. Hudson has filed in Arkansas on  
 26 behalf of plaintiff Catherine Ray against American arising out of the same allegations and events  
 27 alleged in plaintiff Hanni's Complaint. Mr. Hudson's March 3, 2008 letter therefore demands a  
 28 total of \$10,000,000 plus \$250,000 in attorneys' fees or costs or ten percent of the total amount  
 paid out to plaintiff and class members, whichever is greater (essentially \$1,000,000 in attorneys'  
 fees if \$10,000,000 is paid) to settle both this case and plaintiff Catherine Ray's Arkansas case.

1 Counsel for American contacted plaintiff's counsel, David Ramos, on Monday, March 17,  
 2 2008 to request plaintiff's stipulation for American to file an Amended Notice of Removal so that  
 3 American could include plaintiff's Settlement Demand in the record. See Declaration of Jie-Ming  
 4 Chou, ¶ 2. However, Mr. Ramos informed American on March 18, 2008 that plaintiff would not  
 5 stipulate to American's filing of an Amended Notice of Removal. *Id.* at ¶ 3.

6 American contends that its original Notice of Removal sufficiently established this Court's  
 7 jurisdiction pursuant to 28 U.S.C. §§ 1332(d) and 1441(b), but if there were any doubt that the  
 8 amount in controversy did not meet the jurisdictional prerequisite of this Court, that doubt has  
 9 been resolved by the Settlement Demand made by plaintiff on March 3, 2008. As such, American  
 10 moves this Court to grant it leave to file an Amended Notice of Removal.

### 11 III. DISCUSSION

#### 12 A. American Seeks the Court's Permission to File an Amended Notice of Removal to 13 Avoid Any Dispute as to the Appropriate Procedure.

14 There is authority for the proposition that no formal amended petition for removal is  
 15 necessary to add this additional evidence of the amount in controversy. *See, e.g., Gafford v.*  
 16 *General Electric Co.*, 997 F.2d 150, 164 n. 6 (6th Cir. 1993). Courts, including the United States  
 17 Supreme Court, have deemed affidavits or other evidence filed in opposition to a motion to  
 18 remand to be amendments to the removal petition. *See Willingham v. Morgan*, 395 U.S. 402, 407  
 19 n.3 (1969); *USX Corp. v. Adriatic Ins. Co.*, 345 F.3d 190, 203, 204-05 (3d Cir. 2003); *Gafford*,  
 20 997 F.2d at 164-65. Nevertheless, there are other opinions reciting that the trial court had granted  
 21 a defendant's motion to amend its notice of removal. *See, e.g., McMahon v. Bunn-O-Matic Corp.*,  
 22 150 F.3d 651, 654 (7th Cir. 1998); *Tech Hills II Assoc. v. Phoenix Home Life Mut. Ins. Co.*, 5  
 23 F.3d 963, 969 (6th Cir. 1993). Accordingly, to foreclose unnecessary controversy about  
 24 procedure, American hereby moves the Court for leave to file an Amended Notice of Removal.

#### 25 B. Plaintiff's Evaluation of Its Own Case In a Settlement Demand Is Evidence of the 26 Amount In Controversy.

27 The additional statements by counsel for plaintiff Hanni that American has added to its  
 28 Amended Notice of Removal came to American's counsel on March 3, 2008, in the Settlement

1 Demand (Amended Notice ¶ 5(F)). The Settlement Demand is authenticated by the Declaration of  
2 Michael V. Powell filed herewith.

3 It is well-established that plaintiff Hanni's evaluation of her own case in the Settlement  
4 Demand is evidence of the amount plaintiff places into controversy in the action. *See, e.g., Cohn*  
5 *v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *In re Minnesota Mutual Life Ins. Co. Sales*  
6 *Practices Litig.*, 346 F.3d 830, 834-35 (8th Cir. 2003); *Davis v. Chase Bank U.S.A., N.A.*, 453 F.  
7 Supp. 2d 1205, 1209 (C.D. Cal. 2006); *Arellano v. Home Depot U.S.A., Inc.*, 245 F.Supp.2d 1102  
8 (S.D. Cal. 2003); *James v. Childtime Childcare, Inc.*, 2007 WL 1589543 (E.D.Cal. June 1, 2007).

9 Although Federal Rule of Evidence 408 would preclude either party from offering  
10 plaintiff's Settlement Demand into evidence on the merits of plaintiff's case (and American  
11 certainly denies the allegations in the settlement demand letter), Rule 408 does not preclude the  
12 Settlement Demand from being considered as evidence of the amount plaintiff places in  
13 controversy in the action. *See, e.g., Cohn*, 281 F.3d at 840 n. 3.

14 American respectfully requests leave of the Court to file its Amended Notice of Removal  
15 for two reasons:

16 1. Removing defendants may amend their Notices of Removal after thirty days  
17 have passed in order to provide additional factual material in support of allegations of jurisdiction  
18 already made. American's original Notice of Removal adequately alleged, in American's view,  
19 that there is at least \$5,000,000 in controversy in this putative class action, exclusive of interests  
20 and costs, for the purposes of federal jurisdiction under the Class Action Fairness Act (original  
21 Notice of Removal, ¶ 4(E)). American's original Notice also alleged, sufficiently in American's  
22 view, that there is at least \$75,000, exclusive of interest and costs, in controversy in Plaintiff Ray's  
23 individual action (original Notice at ¶¶ 6(B)-(C)). American seeks to add new statements by  
24 plaintiff, made after American's original Notice of Removal was filed, that provide plaintiff's  
25 evaluation of the claims stated in the Complaint she filed in California Superior Court in and for  
26 the County of Napa.

27 American does not seek to add new bases for federal jurisdiction by its Amended  
28 Notice of Removal. Rather, as is permissible, it seeks to add additional and subsequent facts

supporting allegations of jurisdiction made in its original Notice of Removal. *See, e.g., Willingham*, 395 U.S. at 407 n. 3; *USX Corp.*, 345 F.3d at 204-05; 14C Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE § 3733 at 358-361 (3d ed. 1998); 28 U.S.C. § 1653.

2. Plaintiff's Settlement Demand may also be viewed as an "other paper" which independently shows jurisdictional amounts sufficient to make this action removable to federal court, even if the Court were to conclude that plaintiff's Complaint filed in California state court lacked sufficient allegations of the amount in controversy. 28 U.S.C. § 1446(b). *See, e.g., Babasa v. Lenscrafters, Inc.*, 498 F. 3d 972, 973-75 (9th Cir. 2007); *Addo v. Globe Life & Accident Ins. Co.*, 230 F. 3d 759, 760-62 (5th Cir. 2000). Accordingly, American files its Amended Notice of Removal within 30 days after it received plaintiff's settlement demand letter, pursuant to 28 U.S.C §§ 1446(b) and 1453(b).

#### IV. CONCLUSION

For the reasons stated above, defendant American Airlines, Inc., respectfully requests that the Court grant leave to American to file its Amended Notice of Removal.

DATED: March 19, 2008

COOPER, WHITE & COOPER LLP

By:

Jie-Ming Chou

Attorneys for Defendant American Airlines, Inc.

EXHIBIT 1

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10 Attorneys for Defendant, American Airlines, Inc.

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**  
14

15 KATHLEEN HANNI, individually and on  
behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 AMERICAN AIRLINES, INC., and DOES 1  
19 through 20, inclusive,

20 Defendants.  
21

CASE NO. C08-00732 CW

**AMENDED NOTICE OF REMOVAL**

22 Defendant American Airlines, Inc., ("American") files this Amended Notice of Removal  
23 pursuant to 28 U.S.C. §§ 1441(a), 1446, and 1453(b), and pleads as follows:

24 1. Although American had not been served with process, it became aware that on  
25 December 28, 2007, an action had been commenced in the Superior Court of the State of  
26 California in and for the County of Napa, entitled *Kathleen Hanni, individually and on behalf of*  
27 *all others similarly situated v. American Airlines, Inc. and DOES 1 through 20, Inclusive*, as Case  
28 Number 26-40576 ("Complaint").



2. American filed its original Notice of Removal in this action on January 31, 2008. A true and correct copy of American's original Notice of Removal and the Complaint are attached hereto as Exhibit A. Accordingly, the removal was timely under 28 U.S.C. § 1446(b) because American had not yet been served with process in the state court action.

3. American has filed with the Superior Court of the State of California in and for the County of Napa, a notice that this action has been removed to federal court. No further proceedings have been had in the state court.

4. This Court has jurisdiction over this civil action, which is filed as a class action, pursuant to both (a) the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), and (b) this Court's diversity of citizenship and supplemental jurisdiction, 28 U.S.C. §§ 1332(a) & 1367(a).

**A. Removal Pursuant to the Class Action Fairness Act of 2005**

5. This Court has jurisdiction over this civil action, which is filed as a class action, pursuant to 28 U.S.C. § 1332(d) because:

(A) Plaintiff, Kathleen Hanni, is a citizen of the State of California.

(B) Defendant American is a corporation incorporated under the laws of the State of Delaware that has its principal place of business in the State of Texas at the following address: 4333 Amon Carter Boulevard, Fort Worth, Texas 76155.

(C) At least one member of the class of plaintiffs is a citizen of a State different from American within the meaning of 28 U.S.C. § 1332(d)(2)(A). Specifically, plaintiff Hanni is a citizen of the State of California.

(D) Plaintiff filed this action as a "class action" within the meaning of 28 U.S.C. § 1332(d)(1)(b) in that plaintiff pleads that this civil action should be certified as a class action under California Rule of Civil Procedure 382.

(E) The claims asserted by the plaintiff class, aggregated as required by 28 U.S.C. § 1332(d)(2), exceed the sum of \$5,000,000 within the meaning of 28 U.S.C. § 1332(d)(2). More specifically, plaintiff's Class Action Complaint, attached hereto at Exhibit A, pleads that there are approximately 12,000 members of the alleged class. Plaintiff pleads that "the monetary damages at issue in this case are within the jurisdictional requirements of this court". Complaint at



¶3. Accordingly, plaintiff has placed in controversy individual damages in excess of \$25,000. On behalf of a putative class of 12,000 members, the total amount in controversy aggregates in excess of \$5,000,000. Indeed, the jurisdictional amount is met if each member of the putative class seeks even \$420 in damages. In addition, plaintiff also seeks, on behalf of the class, punitive damages and attorneys' fees. In determining the amount in controversy, both punitive damages and attorneys' fees are considered. *E.g., Bell v. Preferred Life Assurance Society*, 320 U.S. 238, 240 (1943) (punitive damages); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9<sup>th</sup> Cir. 1998) (attorneys' fees). Adding plaintiffs' request for punitive damages and attorneys' fees pushes the amount in controversy in this action well above \$5,000,000.

(F) In addition, on March 3, 2008, Mr. Paul S. Hudson, counsel for plaintiff Hanni, sent a settlement demand to American (the "Settlement Demand"). See Exhibit A to Declaration of Michael V. Powell filed herewith. Plaintiff's Settlement Demand further establishes that the amount in controversy in this putative class action exceeds the sum or value of \$5,000,000, exclusive of interest and costs. The Settlement Demand is an "other paper" from the plaintiff based on which the amount in controversy may be ascertained, and this Amended Notice of Removal is filed within 30 days after American first received the Settlement Demand.

(G) The class of unnamed plaintiffs exceeds 100 in number within the meaning of 28 U.S.C. § 1332(d)(5)(B).

(H) The sole defendant is not a State, State official, or other governmental entity within the meaning of 28 U.S.C. § 1332(d)(5)(A).

6. Accordingly, American files this Amended Notice of Removal of this action from the Superior Court of the State of California in and for the County of Napa, pursuant to 28 U.S.C. § 1453(b).

#### **B. Removal Pursuant to Diversity of Citizenship and Supplemental Jurisdiction**

7. This Court would have original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

(A) Plaintiff Kathleen Hanni is a citizen of the State of California. Defendant American is a corporation organized under the laws of the State of Delaware and having its

1 principal place of business in the State of Texas. Accordingly, this action is between citizens of  
2 different States.

3 (B) It is apparent from the face of Plaintiff's Class Action Complaint that the  
4 amount in controversy between Plaintiff and Defendant American exceeds \$75,000, exclusive of  
5 interest and costs. Plaintiff requests attorneys' fees and punitive damages, and those additional  
6 claims must be aggregated with Plaintiffs' request for actual damages to determine the total  
7 amount in controversy. *See Bell*, 320 U.S. at 240 (punitive damages); *Galt G/S*, 142 F.3d at 1155-  
8 56 (attorneys' fees). With attorneys' fees and punitive damages also in controversy between  
9 Plaintiff and American, the total amount in controversy exceeds \$75,000, exclusive of interest and  
10 costs.

11 (C) American has attached as Exhibit B the Declaration of James M. Wagstaffe  
12 in support of this Amended Notice of Removal. Said declaration states that on Plaintiff's personal  
13 case alone, not including moving for class certification or dealing with other class action matters,  
14 Plaintiff will place in controversy at least \$105,000 in attorneys' fees. In determining the  
15 jurisdictional amount, that amount must be added to Plaintiff's claim for compensatory and  
16 exemplary damages.

17 (D) To the extent this action is properly brought as an alleged class action, this  
18 Court has supplemental jurisdiction over the alleged claims of all members of the alleged class  
19 pursuant to 28 U.S.C. § 1367(a). *ExxonMobil Corporation v. Allapattah Services, Inc.*, 125 S.Ct.  
20 2611 (2005).

21 8. Accordingly, American has also removed this action to this Court pursuant to 28  
22 U.S.C. § 1441(a).

23 9. Intradistrict Assignment. This complaint has been removed to the Oakland Division of the  
24 Northern District because the original state court action was filed in the County of Napa.

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28 ///

1 DATED: March 19, 2008

COOPER, WHITE & COOPER LLP

2  
3 By: 

Jie-Ming Chou

4 Attorneys for Defendant American Airlines, Inc.  
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EXHIBIT A

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Attorneys for Defendant  
AMERICAN AIRLINES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

KATHLEEN HANNI, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., and DOES 1  
through 20, inclusive,

Defendants.

CASE NO.

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1332(d) (Class Action  
Fairness Act of 2005) & 1441(b) (Diversity)**

TO THE CLERK OF THE COURT OF THE NORTHERN DISTRICT OF  
CALIFORNIA:

PLEASE TAKE NOTICE that Defendant AMERICAN AIRLINES, INC. ("American")  
hereby removes to this Court the state court action described below:

1. Although American has not yet been served with process, it has become aware that  
on December 28, 2007, an action was commenced in the Superior Court of the State of California  
in and for the County of Napa, entitled *Kathleen Hanni, individually and on behalf of all others  
similarly situated v. American Airlines, Inc. and DOES 1 through 20, Inclusive*, as Case Number  
26-40576 ("Complaint") attached hereto as Exhibit "A".

2. This removal is timely under 28 U.S.C. § 1446(b) because American has not yet  
been served with process in the state court action.

3. Jurisdiction. This Court has jurisdiction over this civil action, which is filed as a class action, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d) and under this Court's ordinary diversity of citizenship and supplemental jurisdiction, 28 U.S.C. §§ 1332(a) and 1367(a) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

**Removal Pursuant to the Class Action Fairness Act of 2005**

4. This Court has jurisdiction over this civil action, which is filed as a class action, pursuant to 28 U.S.C. § 1332(d) because:

(A) Plaintiff, Kathleen Hanni, is a citizen of the State of California.

(B) Defendant American is a corporation incorporated under the laws of the State of Delaware that has its principal place of business in Forth Worth, Texas.

(C) At least one member of the class of plaintiffs is a citizen of a State different from American within the meaning of 28 U.S.C. § 1332(d)(2)(A). Specifically, Plaintiff is a citizen of the State of California.

(D) Plaintiff filed this action as a "class action" within the meaning of 28 U.S.C. § 1332(d)(1)(b) in that plaintiff pleads that this civil action should be certified as a class action under California Code of Civil Procedure 382.

(E) The claims asserted by the plaintiff class, aggregated as required by 28 U.S.C. § 1332(d)(2), exceed the sum of \$5,000,000 within the meaning of 28 U.S.C. § 1332(d)(2). More specifically, Plaintiff's Complaint pleads that there are approximately 12,000 members of the alleged class. Plaintiff pleads that "the monetary damages at issue in this case are within the jurisdictional requirements of this court". Complaint at ¶3. Accordingly, Plaintiff has placed in controversy individual damages in excess of the sum of \$25,000. On behalf of an alleged class of 12,000 members, the total amount in controversy aggregates in excess of \$5,000,000. Indeed, the jurisdictional amount is met if each member of the putative class seeks even \$420 in damages. In addition, plaintiff also seeks, on behalf of the class, punitive damages and attorneys' fees. In determining the amount in controversy, both punitive damages and attorneys' fees are considered. *E.g., Bell v. Preferred Life Assurance Society*, 320 U.S. 238, 240 (1943) (punitive damages); *Galt*

1 *G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9<sup>th</sup> Cir. 1998) (attorneys' fees). Adding  
2 plaintiffs' request for punitive damages and attorneys' fees pushes the amount in controversy in  
3 this action well above \$5,000,000.

4 (F) The class of unnamed plaintiffs exceeds 100 in number within the meaning  
5 of 28 U.S.C. § 1332(d)(5)(B).

6 (G) The sole defendant is not a State, State official, or other governmental entity  
7 within the meaning of 28 U.S.C. § 1332(d)(5)(A).

8 5. Accordingly, American removes this action from the Superior Court for the State of  
9 California, County of Napa, pursuant to 28 U.S.C. § 1453(b).

10 **Removal Pursuant to Diversity of Citizenship and Supplemental Jurisdiction**

11 6. This Court would have original jurisdiction over this action pursuant to 28 U.S.C. §  
12 1332(a)(1).

13 (A) Plaintiff is a citizen of the State of California. Defendant American is a  
14 corporation organized under the laws of the State of Delaware and having its principal place of  
15 business in the State of Texas. Accordingly, this action is between citizens of different States.

16 (B) It is apparent from the face of Plaintiff's Class Action Complaint that the  
17 amount in controversy between Plaintiff and Defendant American exceeds \$75,000, exclusive of  
18 interest and costs. Plaintiff requests attorneys' fees and punitive damages, and those additional  
19 claims must be aggregated with Plaintiffs' request for actual damages to determine the total  
20 amount in controversy. *See Bell*, 320 U.S. at 240 (punitive damages); *Galt G/S*, 142 F.3d at 1155-  
21 56 (attorneys' fees). With attorneys' fees and punitive damages also in controversy between  
22 Plaintiff and American, the total amount in controversy exceeds \$75,000, exclusive of interest and  
23 costs.

24 (C) American has attached the Declaration of James M. Wagstaffe to this  
25 Notice of Removal. Said declaration states that on Plaintiff's personal case alone, not including  
26 moving for class certification or dealing with other class action matters, Plaintiff will place in  
27 controversy at least \$105,000 in attorneys' fees. In determining the jurisdictional amount, that  
28 amount must be added to Plaintiff's claim for compensatory and exemplary damages.



1 (D) To the extent this action is properly brought as an alleged class action, this  
2 Court has supplemental jurisdiction over the alleged claims of all members of the alleged class  
3 pursuant to 28 U.S.C. § 1367(a). *See ExxonMobil Corporation v. Allapattah Services, Inc.*, 125  
4 S.Ct. 2611 (2005).

5 7. Accordingly, American also removes this action to this Court pursuant to 28 U.S.C.  
6 § 1441(b).

7 8. Intradistrict Assignment. This complaint has been removed to the San Francisco  
8 Division of the Northern District because the original state court action was filed in the County of  
9 Napa.

10 DATED: January 31, 2008

COOPER, WHITE & COOPER LLP

11  
12 By: 

Jie-Ming Chou  
Attorneys for Defendant

EXHIBIT A

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10 Telephone: 707-255-1700  
11 Facsimile: 707-255-3660

12 Attorneys for Plaintiff KATHLEEN HANNI.  
13 Individually and on behalf of all others similarly situated

**FILED**

DEC 28 2007

Clerk of the Napa Superior Court  
By: [Signature]  
Deputy

CASE MANAGEMENT CONFERENCE  
DATE: 10-09-2008  
TIME: 8:30am  
PLACE: Courtroom A  
825 Brown Street, Napa CA 94559

14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15  
16 IN AND FOR THE COUNTY OF NAPA  
17

18 KATHLEEN HANNI, individually and on )  
19 behalf of all others similarly situated, )

20 Plaintiff,

21 v.

22 AMERICAN AIRLINES, INC.; and DOES 1 )  
23 through 20, inclusive, )

24 Defendants.  
25

No. 26 - 40576

CLASS ACTION

COMPLAINT FOR FALSE IMPRISONMENT,  
INTENTIONAL INFLICTION OF EMOTIONAL  
DISTRESS, NEGLIGENCE, BREACH OF  
CONTRACT, INTENTIONAL  
MISREPRESENTATION

26 Plaintiff KATHLEEN HANNI, individually, and on behalf of all others similarly  
27 situated, complains against Defendants, and each of them, and alleges as follows:

**Parties**

- 28
1. Plaintiff is a citizen and resident of Napa, Napa County, California.
  2. Defendant American Airlines, Inc. (hereinafter "AA") is a corporation organized under the laws of Delaware with a principal place of business in Fort Worth, Texas. At all relevant times hereto, AA was, and is currently, doing in business in the State of California.

1                   3. The monetary damages at issue in this case are within the jurisdictional  
2 requirements of this court.

3                                   **Class Action Allegations**

4                   4. This cause of action is being maintained as a class action pursuant to  
5 California Code of Civil Procedure § 382. In that regard, the Plaintiff, on her own behalf and  
6 on behalf of a class, alleges the following:

7                                   a. Approximately 12,000 people were affected by the actions of  
8 the Defendant as set forth below and therefore the class is so numerous that joinder of all  
9 members is impracticable;

10                                  b. There are common issues of law and fact common to the  
11 class;

12                                  c. The prosecution of separate actions by individual members of  
13 the class would create the risk of inconsistent or varying adjudications among individuals,  
14 which may be dispositive of other members claims, thereby impairing or prejudicing the  
15 interests of individual class members;

16                                  d. The claims of Kathleen Hanni are typical of the claims of the  
17 class members; and

18                                  e. Kathleen Hanni has agreed to serve as class representative  
19 and has agreed to fairly and adequately protect the interests of the class.

20                   5. In support of the class action allegations, Plaintiff incorporates by reference  
21 the statements and allegations that follow.

22                                   **Events of December 29<sup>th</sup>, 2006**

23                   6. Plaintiff, her husband and her two children purchased tickets for air  
24 transportation on AA flight 1348 scheduled to depart from San Francisco, California on  
25 December 29<sup>th</sup>, 2006, at 6:05 AM (Pacific Time) to Dallas (DFW), Texas, connecting to AA  
26 flight # 3821 scheduled to depart DFW at 1:20 PM (Central Time) to arrive in Mobile,  
27 Alabama at 2:55 PM (Central Time), for a total expected travel time of 7 hours from  
28

1 | departure airport to destination airport. However, the trip actually took over 50 hours due to  
2 | Defendant's misconduct detailed below.

3 |           7. Plaintiff boarded the AA aircraft with her family members at 6:20 AM  
4 | (Pacific Time) which departed from San Francisco at about 7:00 AM after a short delay due  
5 | to mechanical problems.

6 |           8. In route the AA pilot announced the aircraft was being diverted to Austin,  
7 | Texas due to weather "but only for a brief time, to allow waves or fingers of weather to move  
8 | through" and that "we will be landing in Austin to wait for clearance at DFW so we can be  
9 | on our way."

10 |           9. At noon Central Time AA Flight 1348, a filled to capacity MD80, landed in  
11 | Austin with Plaintiff and approximately 140 other passengers and flight crew, taxied to an  
12 | area away from the terminal that upon information and belief was an AA maintenance ramp.

13 |           10. Plaintiff could see that gates were empty at the terminal, but the AA pilot  
14 | reassured the passengers that they would only be 10 to 15 minutes and they would be on  
15 | their way.

16 |           11. AA captain Jesse Fodero announces every 15 minutes for 2 ½ hours that it  
17 | will be just a few more minutes, but at 1:00 pm another AA airliner Flight 1008 pulled up  
18 | beside Flight 1348, followed by AA flights 2414 and 534.

19 |           12. At 2:30 PM (Central Time), AA captain Fodero announced that he had  
20 | asked for buses to bring food and potable water to the aircraft and to allow passengers with  
21 | destinations near Austin and anyone who wanted to go to the terminal. Captain Fodero  
22 | states that they still expected to take off but had not gotten clearance yet. He promised to  
23 | update passengers again in 30 minutes.

24 |           13. A bus arrived at about 2:45 PM, but Captain Fodero ordered that only  
25 | elderly, folks with children and disabled will be allowed to deplane, until further buses  
26 | arrive. Many passengers stampede to the back of the aircraft to exit, but upon information  
27 | and belief the bus only had capacity for 15 passengers and all passengers who do not have  
28 |

1 Austin as a final destination were rejected and forced to remain in the aircraft against their  
2 will.

3 14. Captain Fodero then stated that he is very sure that they will take off  
4 shortly and that anyone who exits the aircraft will not be able to get another flight and will  
5 not receive their baggage.

6 15. At 3:00 PM (Central Time) Captain Fodero stated that he had received  
7 clearance to take off and land at DFW, but, although the sky was clear and sunny, he stated  
8 he was concerned about lightning and would not take off yet, but expected to soon.

9 16. Plaintiff observed as of 3:00 PM there were 13 other AA aircraft lined up  
10 and parked in the same maintenance area as her flight.

11 17. At 3:30 PM (Central Time) AA Captain Fodero announced that "this bird is  
12 not going to fly" and then revealed that buses he requested are not coming and that an AA  
13 manager, who upon information and belief is named Al Tinsley, was refusing to permit AA  
14 aircraft to go to a gate to allow passengers to exit the aircraft.

15 18. Plaintiff and other passengers express their desire to exit the aircraft but  
16 Captain Fodero claims to be powerless to permit deboarding due to AA management.

17 19. At this time, passengers started calling for help on their cell phones, even  
18 though the flight crew had instructed them not to, and some passengers began talking about  
19 popping the emergency exits and running for the terminal, which terrified Plaintiff and other  
20 passengers.

21 20. At about 5:00 PM, the Captain opened the cockpit door and allowed  
22 some passengers to hear his communications with AA management and other parked  
23 aircraft. Plaintiff overheard one captain on another parked aircraft state that Hazmat had  
24 been called because a dog had defecated on some passengers and other passengers were  
25 getting sick from the smell. Plaintiff also overheard that all parked aircraft were being told  
26 by AA management that they could not come to the terminal.

27 21. At about 6:00 PM toilets were backed up; flight attendants served a half  
28 Dixie cup of water, which upon information and belief was nonpotable water from the

1 lavatory sinks and made some passengers sick, and a small bag of pretzels with about 45  
2 calories.

3 22. One passenger told Plaintiff he had missed a funeral and others were  
4 expressing their anger and frustration and anxiety at being imprisoned on the aircraft without  
5 any justification.

6 23. At about 7:00 PM, Captain Fodero announced that he was embarrassed  
7 that AA management would not allow the aircraft to have a gate to return to the terminal and  
8 that he did not know what to say anymore.

9 24. Plaintiff observed that AA gates 24 and 25 were empty and available as  
10 well as gates of other airlines, but Captain Fodero continued to insist that they could not go  
11 to them as did other flight crew members without explanation.

12 25. Plaintiff observed that another parked aircraft flight 534 had its cabin  
13 lights out and someone was flashing SOS, and that a group of men passengers who the  
14 Plaintiff later learned were US Marines were being arrested on the tarmac for. Plaintiff is  
15 informed and believes, getting into a fight to get off their aircraft which had terrified other  
16 passengers.

17 26. At about 8:00 PM passengers on Plaintiff's flight were speaking out loudly  
18 and angrily and the flight attendants ceased circulating through the cabin to ask people to  
19 remain calm but huddled at the front of the aircraft as though they were frightened.

20 27. Captain Fodero continued to repeat that buses and food were coming but  
21 nothing came. The Captain also stated that he was talking to the airport managers to get  
22 passengers to the terminal, but nothing happened.

23 28. Plaintiff needed to go to the bathroom and went to the first class lavatory  
24 as the coach class bathrooms were inoperable, but was told by Captain Fodero who was just  
25 exiting the first class lavatory not to enter or enter at her own risk. Plaintiff had to use a  
26 disgusting lavatory which was not operable, with the toilet bowl filled with excrement and  
27 vomit.

28



1           29. Plaintiff who had recently been victim of an assault then suffered a mild  
2 panic attack and a tightening in her chest and informed the Captain Fodero. Captain Fodero  
3 stated that even if she had a heart attack that they would not allow passengers to leave the  
4 aircraft, they would just take her off the plane as they were doing with a paraplegic diabetic  
5 on another parked aircraft after they had suffering from an attack.

6           30. Plaintiff observed a pregnant woman with a baby making a diaper out of  
7 tee shirt and many other acts of naked survival and physical and emotional distress on the  
8 aircraft caused by inhuman conditions being inflicted on her and others similarly situated.

9           31. As plaintiff was exiting the first class lavatory she overheard Captain  
10 Fodero saying that he could not understand why AA would not send anyone to empty the  
11 toilets and then he told Plaintiff that the only way that passengers could return to the  
12 terminal without AA management permission was if he declared an on board emergency.

13           32. At about 9:04 PM Captain Fodero declared, upon information and belief  
14 after his maximum flight time on duty had expired, an on board emergency and stating that  
15 he might lose his job for doing so.

16           33. Plaintiff's aircraft then proceeded through a series of hair raising turns on  
17 active and inactive runways to the terminal where passengers were deplaned at 9:30 PM,  
18 after 9.5 hours confined on the tarmac in Austin, over 16 hours without food.

19           34. In one last announcement, Captain Fodero stated "Please go to baggage  
20 claim 3, I promise we will get your bags off this plane quickly and efficiently so you may be  
21 on your way. There will be someone from American to help you when you get off the  
22 plane." However, there was no one to help, all food service places were closed, and after  
23 waiting at the baggage claim area for another 2.5 hours at 11:00 PM the Plaintiff's baggage  
24 and others was not unloaded.

25           35. In the terminal AA personnel informed Plaintiff and other passengers that  
26 their bags would not be unloaded and that the flight would be "resumed" at 6:00 AM on  
27 December 30<sup>th</sup>, 2006.

28

1           36.. Defendant provided no vouchers or money for food, lodging, or anything  
2 else except a \$10 hotel discount coupon for passengers who waited in a long line.

3           37. Plaintiff returned after 4 hours at a hotel to find 1,000 people from the  
4 stranded flights all trying to get through ticketing and security as Defendant had issued no  
5 tickets or boarding passes to its stranded passengers.

6           38. Plaintiff was finally advised to get on another flight 1108 by Captain  
7 Fodero who stated that "this bird (flight 1348) is not going to fly."

8           39. Arriving at DFW 20 minutes before the only AA flight to Mobile, Plaintiff  
9 was refused boarding even though she had a confirmed reservation by an AA gate agent who  
10 also rudely informed her that her baggage was on the flight to Mobile, she and her family  
11 would not be allowed to board as the flight was oversold, unless she was "the Queen of  
12 England and you are obviously not the Queen of England." Plaintiff then became violently  
13 sick to her stomach and vomited.

14           40. Plaintiff then politely asked that her baggage be removed, but the AA pilot  
15 stated that due to weight of too many bags he was involuntarily removing 14 passengers but  
16 would not remove any baggage.

17           41. Plaintiff then politely asked the gate agent and pilot for a hotel voucher,  
18 who responded in unison, "Don't blame us for the weather" and summarily rejected her  
19 request and neither paid or offered to pay any compensation for being denied boarding.

20           42. This was in flagrant violation of US DOT bumping rules that require on the  
21 spot cash compensation of \$400 for the inconvenience plus a ticket refund and alternate  
22 transportation and also violated AA's own customer service plan.

23           43. Plaintiff was then forced to spend another night in a hotel at her expense  
24 and finally got on an AA flight on December 31<sup>st</sup>, 2006 to Mobile to retrieve her baggage,  
25 over 50 hours after departing from San Francisco, ruining her vacation, and her husband's  
26 business trip.

1           44. Plaintiff was confined to the aircraft against her will on the ground in  
2 Austin Texas for approximately 9.5 hours by Defendant, and was not permitted by AA to  
3 exit the aircraft until 9:30 PM (Central Time), over 13 hours after boarding the aircraft.

4           45. While confined in the plane on the ground in Austin, Plaintiff was  
5 subjected to harsh and abusive treatment and conditions. The toilets became full and would  
6 not flush and the stench of human excrement and body odor filled the plane.

7           46. Plaintiff and other passengers were deprived of adequate food and water.

8           47. Plaintiff and other passengers were also deprived of access to  
9 medications, nutritional supplements and needs, and hydration especially needed by infirm,  
10 elderly and children.

11           48. Plaintiff and other passengers were forced to witness the physical and  
12 emotional distress and panic of other passengers causing all passengers to suffer emotional  
13 distress and endangering the physical safety of Plaintiff and all passengers.

14           49. The distress of the confined passengers in overcrowded conditions in the  
15 aircraft was witnessed by AA flight crew employees and was also reported to AA ground  
16 personnel and to Austin airport authorities.

17           50. Approximately 12,000 passengers involving about 100 flights on  
18 December 29<sup>th</sup>, 2006 were confined to aircraft diverted from Dallas by Defendant to other  
19 airports and confined for 3 to 12 hours on the aircraft in poor to deplorable conditions by  
20 Defendant.

21           51. Plaintiff and other stranded passengers suffered hunger, thirst, anxiety,  
22 physical illness, emotional distress and monetary losses as a result of Defendant's failure to  
23 permit passengers to exit the aircraft to the airport terminals or to supply the parked aircraft  
24 with essentials of water, food, sanitary waste removal, light, and breathable or fresh air at  
25 normal temperatures.

26           52. Defendant knew or should have known that passengers needed to be  
27 supplied with essential means of comfort and survival on board aircraft, but failed and  
28 refused to do so.

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1           61. Defendant did not provide ticket refunds or other compensation to  
2 passengers that it stranded on December 29<sup>th</sup> and 30<sup>th</sup>, 2006.

3           62. Defendant knowingly misrepresented the reasons for the delays and  
4 confinements by falsely asserting to passengers and the public that aircraft were not able to  
5 take off due to weather or congestion.

6           63. The delays on December 29<sup>th</sup>, 2006 were actually due to causes within  
7 the control of AA and included intentional or negligent lack of personnel, equipment, and  
8 planning for ordinary weather disruptions by AA.

9           64. The confinements by AA, upon information and belief, were to avoid  
10 expenses and lawful obligations to passengers associated with strandings, diversions and  
11 canceled flights and for AA's and its officers, employees, agents and stockholders own  
12 pecuniary gain at the expense of Plaintiff and other passengers.

13           65. While Plaintiff and other passengers were confined to their aircraft in  
14 Austin and other diverted airports, other flights of Defendant and other airlines were taking  
15 off and landing without significant delays.

16           66. Upon information and belief, the Dallas (DFW) airport was only closed to  
17 air traffic for approximately 2.5 hours from 2:00 PM to 4:30 PM on December 29<sup>th</sup>, 2006.

18           67. Upon information and belief, AA has a corporate policy, practice and  
19 pattern of confining and imprisoning passengers on aircraft of excessively delayed or  
20 cancelled flights for excessive periods of time to prevent "passenger migration" and this  
21 unlawful practice was used against Plaintiff and other similarly situated passengers by  
22 Defendant's employees and agents on December 29<sup>th</sup>, 2006.

23           68. Upon information and belief, AA has inflicted its practices of confining  
24 and imprisoning passengers for over 3 hours to prevent "passenger migration" on over ten  
25 thousand other passengers since December 29<sup>th</sup>, 2006, including another mass stranding in  
26 April 2007.

27           69. By unlawfully confining Plaintiff and other passengers diverted from  
28 Dallas on December 29<sup>th</sup>, 2006 in inhuman conditions, AA avoided ticket refunds, overnight

1 lodging and meal expenses for passengers, alternate transportation expenses, including on  
2 other airlines that under an industry convention and practice will honor tickets of a  
3 defaulting airline and back charge the defaulting airline, ground transportation expenses,  
4 terminal employee overtime and staffing expenses, and other expenses normally associated  
5 with mass strandings and cancellations.

6 70. Defendant could have permitted passengers to exit the aircraft after the  
7 diversions on December 29<sup>th</sup>, 2006 but failed and declined to do so for its own pecuniary  
8 gain.

9 71. Upon information and belief, some passengers after the confinements  
10 ended were forced by Defendant to fly to destinations that they not longer wished or needed  
11 to travel to, but were forced to do so by Defendant who did not permit them to exit the  
12 aircraft and obtain alternate transportation to another destination or to return home.

13 72. Other passengers were forced under duress not to abandon their travel  
14 with AA on December 29<sup>th</sup> and 30<sup>th</sup>, 2006 because AA refused to return their checked  
15 baggage, even after promising to do so after finally permitting passengers to exit the aircraft  
16 the evening of December 29<sup>th</sup>, 2006.

17 73. Passengers on the Defendant's diverted flights had their travel delayed up  
18 to 3 days after December 29<sup>th</sup>, 2006 due to non-weather conditions that were within the  
19 control of Defendant without compensation for passenger expenses and losses by AA.

20 74. Upon information and belief, Defendant was not prevented or prohibited  
21 from permitting passengers to exit or re-supply and service the aircraft in Austin or other  
22 diverted airports by the Federal Aviation Administration air or ground controllers or by  
23 airport management, or other government authorities.

24 **FIRST CAUSE OF ACTION**

25 (False Imprisonment)

26 75. Plaintiff hereby incorporates by reference as though set forth in full, the  
27 allegations of paragraphs 1 through 74, inclusive.

28

1 76. Plaintiff and other passengers similarly situated were deprived of their  
2 personal liberty by Defendant for over 3 hours against their will without legal justification.

3 77. As a proximate result of the false imprisonment of Plaintiff and others  
4 similarly situated, Plaintiff and others similarly situated suffered serious injury to their  
5 persons, emotional distress, loss of time, physical discomfort, inconvenience and missed  
6 employment opportunities, all to their damage in an amount within the jurisdiction of this  
7 court to be established according to proof at trial.

8 78. The actions of Defendant herein alleged were fraudulent, malicious and  
9 oppressive and; consequently Plaintiffs, and those similarly situated, are entitled to an award  
10 of punitive damages.

11 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

12 **SECOND CAUSE OF ACTION**

13 (Intentional Infliction of Emotional Distress)

14 79. Plaintiff hereby incorporates by reference as though set forth in full, the  
15 allegations of paragraphs 1 through 78, inclusive.

16 80. Defendant intended or knew or should have known that emotional  
17 distress to Plaintiff and others similarly situated was the likely result of its conduct.

18 81. Defendant's conduct was outrageous, extreme, beyond the bounds of  
19 decency and is intolerable in a civilized community.

20 82. The acts and/or omissions of the Defendant were the cause of Plaintiff's  
21 distress and the distress of others similarly situated.

22 83. The emotional distress was so severe that no reasonable person could be  
23 expected to endure it, wherefore Defendant is guilty of the tort of outrage, intentional or  
24 negligent infliction of emotional distress or prima facie tort.

25 84. The acts and/or omissions of the Defendant as set forth above were the  
26 proximate cause of damages to Plaintiff and others similarly situated, which damages are in  
27 an amount in excess of the jurisdictional limits of this Court, the exact amount of which will  
28 be established according to proof at trial.



1 85. In doing the acts herein alleged, the defendants acted with fraud, malice  
2 and oppression and Plaintiff, and all those similarly situated, are therefore entitled to an  
3 award of punitive damages according to proof at trial.

4 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

5 **THIRD CAUSE OF ACTION**

6 (Negligence)

7 86. Plaintiff hereby incorporates by this reference as though set forth in full,  
8 the allegations of paragraphs 1 through 85, inclusive.

9 87. Defendant as an operator offering air transportation to the general public  
10 owed a duty to Plaintiff and others similarly situated of due care, to use best efforts to bring  
11 passengers safely to their destinations, to plan for weather related disturbances in its flight  
12 operations, and to refrain from mistreatment of them with unjustified involuntary  
13 confinement, deprivation of passengers' baggage and stranding in remote locations.

14 88. Defendant breached its duties to Plaintiff and others similarly situated on  
15 December 29<sup>th</sup> and 30<sup>th</sup>, 2006, and its conduct was in reckless disregard its duty owed to  
16 Plaintiff and similarly situated passengers.

17 89. Defendant's conduct was the proximate cause of damage and losses to the  
18 Plaintiff and others similarly situated.

19 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

20 **FOURTH CAUSE OF ACTION**

21 (Breach of Contract)

22 90. Plaintiffs hereby incorporate as though set forth in full, the allegations of  
23 paragraphs 1 through 89, inclusive.

24 91. Defendant has filed with the US Department of Transportation, published  
25 on its web site, and referenced on its tickets "conditions of carriage" and a "Customer  
26 Service Plan". These documents cannot be copied at this time, but will be made available  
27 to the Court and the Defendant.

28

1 92. Upon information and belief, the aforementioned documents form a  
 2 contract between the Defendant and Plaintiff and others similarly situated. Plaintiff and  
 3 others similarly situated have performed all obligation to be performed on their part under  
 4 the terms of the contract.

5 93. Defendant, by its conduct on December 29<sup>th</sup>, 2006 and subsequent  
 6 thereto, breached its Contract with Plaintiff and others similarly situated in various ways,  
 7 including but not limited to breach of the implied covenant of good faith and fair dealing,  
 8 provisions relating to Delays, Cancellations, and Diversion Events, Essential Customer Needs  
 9 During Extraordinary Delays, Ticket Refunds, Flights with Oversales, and Baggage Delivery  
 10 and Liability.

11 94. As a result of Defendant's breach of contract, Plaintiff and others similarly  
 12 situated have sustained damages as more fully set forth below.

13 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

14 **FIFTH CAUSE OF ACTION**

15 (Deceit/Fraud)

16 95. Plaintiffs hereby incorporate as though set forth in full, the allegations of  
 17 paragraphs 1 through 94, inclusive.

18 96. Plaintiff knowingly deceived Plaintiff and others similarly situated when It  
 19 made representations as to the causes and justifications for the diversions (paragraphs 8 & 41  
 20 above), schedule changes (paragraph 8 above), confinements (paragraphs 12, 18, 27 and 29  
 21 above), expected departure times (paragraphs 11, 12, 14, 15 & 35), and baggage delivery  
 22 (paragraph 34) on December 29<sup>th</sup> and 30<sup>th</sup>, 2006. The statements were in fact false.

23 97. Plaintiff and others similarly situated, at the time the statements were  
 24 made by Defendant were ignorant of the falsity of the statements made by Defendant and  
 25 relied to their detriment on the false and deceptive statements of Defendants.

26 98. Defendant, upon information and belief, sought to deceive and defraud  
 27 Plaintiff and others similarly situated for Defendant's pecuniary gain, and specifically with  
 28 intent to fraudulently invoke a Force Majeure clause in its contract with Plaintiff by falsely

1 asserting a weather emergency as justification for the extreme delays, confinements, and  
2 other mistreatment of passengers and to avoid other liabilities to Plaintiff for its misconduct.

3 99. As a proximate result of the fraudulent conduct of the Defendant, Plaintiff  
4 and those similarly situated have been damaged in an amount which satisfies the  
5 jurisdictional limits of this court in an amount to be established according to proof at trial.

6 100. The aforementioned conduct was an intentional misrepresentation,  
7 deceit and/or concealment of facts known to Defendant in conscious disregard of Plaintiffs  
8 rights and well being such as to constitute oppression, fraud or malice entitling Plaintiff and  
9 those similarly situated to an award of punitive damages according to proof.

10 WHEREFORE, plaintiffs pray for judgment against defendants, and each of  
11 them, as follows:

12 1. For general and compensatory damages on all causes of action according to  
13 proof at trial;

14 2. For punitive and exemplary damages on the First, Second, and Fifth causes  
15 of action according to proof at trial;

16 3. For reasonable attorneys fees according to law and proof at trial;

17 4. For costs of suit herein; and

18 5. For such other and further relief as the Court may deem just and proper.

19  
20 Dated: December 28, 2007

LAW OFFICES OF DAVID G. RAMOS

21  
22 By: 

DAVID G. RAMOS

23 Attorneys for Plaintiff KATHLEEN HANNI,  
24 individually and on behalf of all others similarly  
25 situated  
26  
27  
28

**PROOF OF SERVICE**

I am a resident of the State of California. I am over the age of eighteen years, and not a party to this action. My business address is 201 California Street, Seventeenth Floor, San Francisco, California 94111-5002.

On January 31, 2008, I served the following document(s):

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332(D) (CLASS ACTION FAIRNESS ACT OF 2005) & 1441(B) (DIVERSITY)**

on each of the parties listed below at the following addresses:


Law Offices of Paul S. Hudson P.C.  
4411 Bee Ridge Road #274  
Sarasota, Florida 34233

David G. Ramos, Esq.  
Law Offices of David G. Ramos  
3266 Villa Lane  
Napa, California 94558

**BY FEDEX:** On the date specified above in San Francisco County, as to each of the parties identified in the above service list, I deposited in a box or other facility regularly maintained by the overnight service carrier, or delivered to a courier or driver authorized by said overnight service carrier to receive documents on its behalf, a true copy of the above-referenced document(s) in a sealed envelope or package designated by the overnight service carrier, with delivery fees paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2008, at San Francisco, California.

  
Melissa Batchelder

**EXHIBIT B**

COOPER, WHITE & COOPER LLP  
JIE-MING CHOU (SBN 211346)  
jchou@cwclaw.com  
STEPHEN KAUS (SBN 57454)  
skaus@cwclaw.com  
201 California Street, 17<sup>th</sup> Floor  
San Francisco, California 94111  
Telephone: (415) 433-1900  
Facsimile: (415) 433-5530

Attorneys for Defendant

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

KATHLEEN HANNI, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., and DOES 1  
through 20, inclusive,

Defendants.

CASE NO.

DECLARATION OF JAMES  
WAGSTAFFE IN SUPPORT OF  
DEFENDANT AMERICAN AIRLINES,  
INC.'S NOTICE OF REMOVAL

BZ

I, JAMES M. WAGSTAFFE, hereby declare:

1. I am a licensed attorney and partner with the law firm of Kerr & Wagstaffe LLP located at 100 Spear St #1800, San Francisco, CA 94105. I am an active member in good standing of the State Bar of California, and have been since 1980. I have personal knowledge of the matters set forth in this declaration, except for those facts which are alleged on information and belief, and as to those facts, I believe them to be true. I could and would testify competently thereto if called as a witness.

2. I have been retained in this case by attorneys with the Cooper, White & Cooper LLP law firm, who are counsel for defendant American Airlines, Inc. ("AA"), to review Plaintiff's class action complaint for False Imprisonment, Intentional Infliction of Emotional Distress, Negligence, Breach of Contract, and Deceit/Fraud ("Complaint"), filed on or about December 28,

594245.1

Declaration of James Wagstaffe in Support of Defendant's Notice of Removal

1 2007 in Napa Superior Court, Case No. 26-40576, and to evaluate certain claims made in the  
2 Complaint. I have also been asked to render opinions related to Plaintiff's claims. In particular, I  
3 have been asked to render an opinion as to whether the nature of Plaintiff's claims, including  
4 Plaintiff's claim for attorneys fees and expenses, in all reasonable probability would exceed the  
5 amount of \$75,000.00 (SEVENTY-FIVE THOUSAND DOLLARS), in light of the Plaintiff's  
6 claims, the complexity of the case as plead, the range of damages available should Plaintiff  
7 prevail, and the nature of the attorneys fees and expenses that Plaintiff's counsel would have to  
8 incur in pursuit of such claims.

9 3. My specific legal qualifications and experience are set forth on my current resume,  
10 which is attached to this affidavit as Exhibit A and incorporated by this reference.

11 4. Based on my professional experience and judgment, it is my opinion that: (a)  
12 Plaintiff's claims for damages and for attorneys fees and expenses in all reasonable probability will  
13 exceed the amount of Seventy-Five Thousand Dollars (\$75,000.00 ) for pursuit of Plaintiff's  
14 individual claims alone, even if this case is not certified as a class action; and (b) in all reasonable  
15 probability, Plaintiff will incur more than Seventy-Five Thousand Dollars (\$75,000.00) in  
16 attorneys fees even prior to the Court's determination whether this case should be certified as a  
17 class action.

18 5. In reaching these opinions I have reviewed the following: the allegations contained  
19 in Plaintiff's Complaint; the relevant California Rules of Civil Procedure pertinent to Plaintiff's  
20 claims in the Complaint; reported cases decided under those relevant California procedural  
21 statutes; rulings from the U.S. Supreme Court and the Ninth Circuit Court of Appeals, which have  
22 concluded that when determining the amount in controversy both punitive damages and attorneys  
23 fees are considered in determining the jurisdictional amount. *See Bell v. Preferred Life Assurance*  
24 *Society of Montgomery, Ala.*, 320 U.S. 238, 240 (1943) (punitive damages); *Galt G/S v. JSS*  
25 *Scandinavia*, 142 F.3d 1150, 1155-56 (9<sup>th</sup> Cir. 1998) (attorneys fees).

27 6. In reaching these opinions, I have also relied on my professional experience of  
28



1 more than twenty-seven years as a commercial litigator in the State of California as set forth in  
2 part in Exhibit A to this affidavit. I have extensive experience in litigating putative class action  
3 cases involving all types of claims and allegations.

4 7. Based upon my professional experience and judgment, I anticipate that counsel for  
5 Plaintiff will undertake and incur the following time and resources investments in prosecuting the  
6 Complaint, up to but not including trial and trial preparation:

7 a. Up to thirty (30) hours in performing a thorough pre-suit investigation and  
8 drafting the Complaint.

9 b. Up to fifty (50) hours in responding to a motion to dismiss the Complaint on  
10 jurisdictional grounds, in particular that the claims are preempted by federal law and/or primary  
11 jurisdiction rests with an administrative agency and, therefore, the action should be dismissed for  
12 lack of subject-matter jurisdiction.

13 c. Up to forty (40) hours in responding to other dispositive motions, including those  
14 based upon affirmative defenses, e.g. waiver (based upon Plaintiff's failure to comply with the  
15 provisions of the Conditions of Carriage), and based upon failure to establish a contract breach,  
16 e.g. the Complaint references the provisions of the contract "upon information and belief," see ¶  
17 57, and further proof of the terms of the allegedly breached contract will be limited by the doctrine  
18 of parole evidence, which is a substantive rule of law.

19 d. Up to one hundred (100) hours taking depositions of various personnel to  
20 support the claims. Even assuming the court does not grant leave to exceed the FRCP 30(a)(2)(A)  
21 limit of ten depositions, I would expect Plaintiff's counsel to depose up to ten (10) individuals,  
22 including: FAA ground controller(s), FAA air controllers, management at the Austin, Texas  
23 airport, American Airlines personnel allegedly causing delays, representatives of other airlines and  
24 airports, and, American Airlines' captain, crew, and operators involved in the December 29, 2006  
25 flight.

26 e. Up to thirty-five (35) hours preparing for the taking of depositions.

27 f. Up to sixteen (16) hours attending and defending the depositions of Plaintiff and  
28 one testifying expert retained by Plaintiff's counsel.

1 g. Up to ten (10) hours preparing for the depositions of Plaintiff and consulting  
2 with expert(s).

3 h. Up to thirty (30) hours preparing and propounding various written discovery  
4 requests.

5 i. Up to thirty (30) hours preparing responses to written discovery requests.

6 j. Up to twenty (20) hours resolving potential discovery issues, including filing and  
7 responding to motions relating to discovery issues.

8 8. I am not familiar with Plaintiff's counsel, but would conservatively expect  
9 Plaintiff's counsel to request an hourly rate of \$350 per hour given his years of practice and the  
10 complexity of the case. Plaintiff's counsel will almost certainly expend at a minimum 300 hours  
11 prior to any class certification hearing in this matter. Therefore without regard to recoverability,  
12 reasonableness, or necessity in any ultimate award of attorneys fees to Plaintiff in my opinion, it is  
13 beyond question Plaintiff's "claim" for attorneys fees will exceed \$75,000.00 prior to any class  
14 determination in this case. Plaintiff's claim for attorneys fees will exceed that amount at the  
15 conclusion of the case, even if class certification is denied and only Plaintiff's individual claims  
16 are litigated.

17 I declare the foregoing to be true under penalty of perjury. This declaration was executed  
18 at San Francisco, California on January 31, 2008.

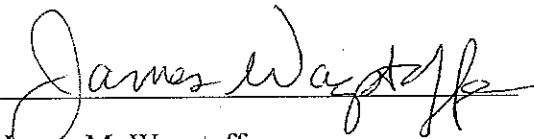
19  
20   
21 James M. Wagstaffe

EXHIBIT A

KERR  
&  
WAGSTAFFE  
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## Attorneys

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H. Sinclair Kerr, Jr.  
James M. Wagstaffe  
Michael von Loewenfeldt  
Ivo Labar  
Keith K. Fong  
Holly Hogan  
Michael Ng  
Adrian J. Sawyer

**James M. Wagstaffe**

Jim, partner and co-founder, handles diverse litigation emphasizing professional and governmental representation, business litigation, First Amendment matters, and media cases. He represents individual and corporate clients in federal and state actions, and specializes in the firm's intellectual property and First Amendment practice areas.

**Educational Background**

In 1977, Jim received his B.A. degree with distinction from Stanford University. In 1980, Jim received his J.D. degree from the University of California, Hastings College of the Law (San Francisco), where he was honored for his achievements in moot court competition.

Following law school, Jim served as a judicial law clerk for the Honorable Spencer Williams in the United States District Court for the Northern District of California.

**Super Lawyer**

In December 1999, California Lawyer named Jim as one of its Top Twenty Lawyers of the Year. Jim also was added to the 2007 list of Northern California Super Lawyers, an honor given to the top 5% of attorneys practicing in Northern California.

**Federal Civil Procedure Expert**

Jim is a nationally-known speaker on federal civil procedure and is considered to be an authority on that subject. He is an instructor at the Federal Judicial Center's "New Judges Workshops," educating newly-appointed federal judges on all aspects of federal procedure. Jim's numerous publications include the widely-used *Federal Civil Procedure Before Trial (TRG 2005 - Three Volumes)*, *Removal and Remand; Commencing Actions in Federal Court*, *"Much Ado About Doe Defendants," 5 Cal. Lawyer*; and *"Life After Remand," Federal Litigation*. He also co-authored the Summary of California Ethics Rules. Jim is a frequent lecturer and moderator for programs on federal civil procedure presented by the *Rutter Group*.

**Important Cases, Important Results**

Jim's cases reflect the depth of his experience and ability to obtain results, particularly in complex and novel areas of the law. For example, he represented the State Bar of California before the California Supreme Court. *Warden v. State Bar of California*, 21 Cal. 4th 628 (1999). In that case, he successfully defended the State Bar against a constitutional challenge to the Bar's

requirements for continuing legal education for lawyers in California. Jim also successfully defended the State Bar in separate federal and state court lawsuits that challenged the constitutionality of the California Legislature's decision to allow only California-resident lawyers to vote and sit in elections for the State Bar Board of Governors. *Hoffman v. State Bar of California*, 113 Cal. App. 4th 630 (2003).

Jim also is one of the most sought after First Amendment lawyers in the country. His First Amendment and media experience is exemplified by his successful defense of The New Yorker Magazine in the libel trial *Masson v. New Yorker*, 832 F. Supp. 1350 (N.D. Cal. 1993), aff'd 85 F.3d 1394 (9th Cir. 1996) held in the U.S. District Court for the Northern District of California. He has successfully defended numerous broadcasters, newspapers, and magazines at trial, on summary judgment, and under California's Anti-SLAPP (Strategic Lawsuits Against Public Participation) statute.

Recently, Jim represented sex.com in a dispute with Verisign/Network Solutions over their mishandling of the famous domain name. He successfully obtained a sweeping victory from the Ninth Circuit Court of Appeals in a landmark decision with far reaching implications in all areas of Internet infrastructure. *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003).

#### **Author, Speaker, Professor**

In addition to his legal publications Mr. Wagstaffe also has authored *Romancing the Room* (Three Rivers Press), an adroit, step-by-step guide to public speaking. Most recently, Mr. Wagstaffe was a contributing author to *The Expert's Guide to 100 Things Everyone Should Know How to Do* alongside fellow contributors Donald Trump, Larry King, and Ira Glass, among others. Jim is an in-demand speaker for both private and public speaking engagements.

Sharing knowledge and experience within the legal community is core to the firm's belief system. To further reinforce this belief, Jim is committed to teaching graduate and undergraduate level students. Jim is an adjunct professor in constitutional law and civil procedure at Hastings College of the Law and in Media Law at San Francisco State University. He has also taught the Practical Speech Communication course at Stanford University for over 25 years.

#### **Awards and Recognition**

In addition to the previously mentioned honors, in 2004, Jim shared a Peabody Award for his copyright contributions to the PBS documentary, *The DNA Files*.

In 1991, he received the prestigious James Madison Freedom of Information Award from The Society of Professional Journalists.

#### **Published and Westlaw Cases**

[Click here to see all cases.](#)

#### **Personal Information**

As a native of the Bay area, Jim lives in Burlingame with his wife, Karen and their four children.

**Contact:**

wagstaffe@kerrwagstaffe.com

Kerr & Wagstaffe LLP, 100 Spear Street, Suite 1800, San Francisco, CA 94105

TEL: 415.371.8500 FAX: 415.371.0500

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**PROOF OF SERVICE**

I am a resident of the State of California. I am over the age of eighteen years, and not a party to this action. My business address is 201 California Street, Seventeenth Floor, San Francisco, California 94111-5002.

On January 31, 2008, I served the following document(s):

**DECLARATION OF JAMES WAGSTAFFE IN SUPPORT OF DEFENDANT  
AMERICAN AIRLINES, INC.'S NOTICE OF REMOVAL**

on each of the parties listed below at the following addresses:

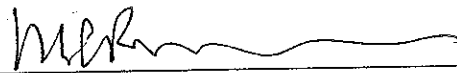
Law Offices of Paul S. Hudson P.C.  
4411 Bee Ridge Road #274  
Sarasota, Florida 34233

David G. Ramos, Esq.  
Law Offices of David G. Ramos  
3266 Villa Lane  
Napa, California 94558

**BY FEDEX:** On the date specified above in San Francisco County, as to each of the parties identified in the above service list, I deposited in a box or other facility regularly maintained by the overnight service carrier, or delivered to a courier or driver authorized by said overnight service carrier to receive documents on its behalf, a true copy of the above-referenced document(s) in a sealed envelope or package designated by the overnight service carrier, with delivery fees paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2008, at San Francisco, California.

  
Melissa Batchelder